

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

STEPHANIE BAIYASI,

Plaintiff,

Case No. 11-cv-13094-TLL-CEB
Hon. Thomas L. Ludington

vs

DELTA COLLEGE and DAVID
BAILEY, in his individual and official
capacity, jointly and severally,

Defendants.

THE MASTROMARCO FIRM
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PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR PROTECTIVE ORDER STAYING DISCOVERY
PENDING DETERMINATION OF DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT PURSUANT TO FED.R.CIV.P. 12 (b)(6) and FED.R.CIV.P. 56 (c)

NOW COMES the Plaintiff, Stephanie Baiyasi, by and through her attorneys, The Mastromarco Firm and hereby responds in opposition to Defendants' Motion stating more fully as follows:

1. The Court should note that the Defendants have filed a legal as well as an evidentiary challenge to Plaintiff's amended complaint.
2. In its motion the Defendants cite to a Sixth Circuit decision which held in relevant part:

The Ninth Circuit addressed this issue in *Jarvis v. Regan*, 833 F.2d 149 (9th Cir.1987). There, the court concluded that "[d]iscovery is only appropriate where there are factual issues raised by a Rule 12(b) motion." *Id.* at 155. Where the district court accepts the plaintiff's allegations as true, but concludes that those allegations are insufficient as a matter of law, it is not an abuse of discretion to limit discovery *sua sponte*. *Id.* Here, given the highly exaggerated nature of Flaim's initial complaint, and the fact that Medical College of Ohio filed a Rule 12(b)(6) responsive motion that, among other things, raised the defense of qualified immunity, it was not unreasonable for the district court to conclude that the case could be disposed of on the face of the complaint and that discovery would not affect the outcome. We therefore agree with the *Jarvis* court and conclude that the district court in this case did not abuse its discretion in limiting discovery pending its resolution of Medical College of Ohio's 12(b)(6) motion.

Flaim v. Medical College of Ohio, 418 F.3d 629, 644 (C.A.6 (Ohio),2005).

3. Unlike the Defendant in the Sixth Circuit case, the Defendants in the present case have chosen to include an evidentiary challenge for which Plaintiff has responded based upon the information and evidence available to her.
4. Accordingly, the present case is readily distinguishable from the Sixth Circuit case cited by the Defendants.

5. Furthermore, the case cited by the Defendant supports the denial of the motion in the present case due to the evidentiary and factual challenge included within the motion.
6. It is respectfully submitted that the purported scheduling conflict does not warrant a complete stay of discovery. Furthermore, the Defendant has failed to explain why a different attorney from Defense Counsel's office could not handle the depositions in the present case and/or the depositions in the other case.
7. While it is true that this Court may have granted a stay in the past in another case, the Defendant still has the burden of demonstrating a legal basis for the relief sought in the present motion and has failed to do so.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court deny Defendants' motion.

Respectfully submitted,

THE MASTROMARCO FIRM

Dated: May 4, 2012

By: s/Russell C. Babcock
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**BRIEF IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR PROTECTIVE ORDER STAYING DISCOVERY
PENDING DETERMINATION OF DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT PURSUANT TO FED.R.CIV.P. 12 (b)(6) and FED.R.CIV.P. 56 (c)**

The Plaintiff hereby relies upon the legal support set forth in her response and requests that this Honorable Court deny Defendants' motion.

Respectfully submitted,

THE MASTROMARCO FIRM

Dated: May 4, 2012

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PROOF OF SERVICE

I hereby certify that on May 4, 2012, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system which will send notification of such filing to the following: EILEEN K. HUSBAND, and I hereby certify that I have mailed by United States Postal Service the document to the following non ECF participants: N/A.

Dated: May 4, 2012

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